

PROCEEDINGS

of a

MILITARY COURT FOR THE TRIAL OF WAR CRIMINALS

held at

THE WAR CRIMES COURT, HAMBURG

on

WEDNESDAY, 17th OCTOBER, 1945

upon the trial of

Kapitanleutnant HEINZ ECK

Leutnant zur See AUGUST HOFFMANN

Marine Stabsarzt WALTER WEISSPENNIG

Kapitanleutnant (Ing) HANS RICHARD LENZ

Gefreiter SCHWENDER

PRESIDENT :

Brigadier C.I.V. JONES, CBE, Commander 106 AA Bde.

MEMBERS :

Brigadier R.M. JERRAM, DSO, MC.

Commodore D. YOUNG-JAMIESON, Royal Navy.

Captain Sir ROY GILL, KBE, Royal Naval Reserve.

Lieutenant-Colonel H.E. PIPER, Royal Artillery.

Captain E. MATTHEOS, Royal Hellenic Navy.

Commander N.I. SARRIS, Royal Hellenic Navy.

JUDGE ADVOCATE :

Major A. MELFORD STEVENSON, K.C., Deputy Judge Advocate Staff, Judge Advocate General's Office.

FIRST DAY

The order convening the Court and the charge sheet are laid before the Court.

The Accused are brought before the Court.

The Prosecutor is Colonel R.C. HALSE, Military Department, Judge Advocate General's Office.

The Defending Officers and Counsel are as follows :

For the Accused Kapitaneutnant Eck: Frigattenkapitan MECKEL and Dr. TODSEN.

For the Accused Leutnant zur See Hoffmann: Dr. PARST and Dr. P. WULF (as to character only).

For the Accused Marine Stabsarzt Weisspfennig: Dr. PARST.

For the Accused Kapitaneutnant (Ing) Lens: Major N. LEMON, Barrister-at-Law, HQ 8 Corps District.

For the Accused Gefreiter Schwender: Dr. PARST.

For all the Accused: Professor A. WAGNER.

At 1015 hours the trial commences.

The order convening the Court is read.

The names of the President and members of the Court are read over in the hearing of the Accused, and they severally answer to their names.

The President, members and Judge Advocate are duly sworn.

THE JUDGE ADVOCATE: Will you ask the Accused if any one of them objects to SSM Sanders and S/Sjt Stanton, who are expert military shorthand writers, acting as shorthand writers at their trial ?

(All the Accused reply: "No".)

S/1809493 SSM P. Sanders and S/13089685 S/Sjt G.R. Stanton are duly sworn as shorthand writers.

THE JUDGE ADVOCATE: Will you ask each of the Accused in turn whether he objects to any one of the four interpreters ?

(All the Accused reply: "No".)

2/Lt. K. Kegel, Dutch Forces, attached 1 Horsefords, Serjeant J.M. Ashley, 15 Scottish Rec., Corporal R.K. Cunningham, HQ 4 Arm'd Bde, and Trooper G.S. Moore, HQ 22 Arm'd Bde, are duly sworn as interpreters.

THE JUDGE ADVOCATE: Kapitaneutnant Heine Eck of the German Navy, is that your correct rank and name ?

THE ACCUSED ECK: Yes.

THE JUDGE ADVOCATE: Leutnant zur See August Hoffmann, is that your correct rank and name ?

THE ACCUSED HOFFMAN: Yes.

THE JUDGE ADVOCATE: Marine Stabsarzt Walter Weisspfennig, is that your correct rank and name ?

THE ACCUSED, WEISSPFENNIG: My rank is Oberstabsarzt, superior medical officer.

THE JUDGE ADVOCATE: Kapitänleutnant (Ing) Hans Richard Lenz, is that your correct rank and name?

THE ACCUSED, LENZ: Yes.

THE JUDGE ADVOCATE: Gefreiter Schwender, is that your correct rank and name?

THE ACCUSED, SCHWENDER: Yes.

THE JUDGE ADVOCATE: Eck, Hoffmann, Weisspfennig, Lenz and Schwender, you are all charged jointly with the following crime; Committing a war crime in that you in the Atlantic Ocean on the night of 13/14 March 1944 when Captain and members of the crew of Unterseeboot 852 which had sunk the steamship "Pelous" in violation of the laws and usages of war were concerned in the killing of members of the crew of the said steamship, Allied nationals, by firing and throwing grenades at them. Kapitänleutnant Heinz Eck, are you guilty or not guilty of that charge?

THE ACCUSED, ECK: Not guilty.

MAJOR LERMON: Before the accused plead to this arraignment, may I, on behalf of all the accused, make a formal objection to this charge. I am sure it is a matter which can be cleared up very shortly. The charge sheet as we have it here may be read in two ways: "When Captain and members of the crew of Unterseeboot 852 which had sunk the steamship 'Pelous' in violation of the laws and usages of war (comma) were concerned in the killing of members of the crew of the said steamship, Allied nationals, by firing and throwing grenades at them." Is it the contention that the "Pelous" was sunk in contravention of the laws and usages of war? If that is the contention it is the submission of the defence that this is a bad charge in that it infringes Rule of Procedure 13(a). On the other hand I appreciate it may be read: "When Captain and members of the crew of Unterseeboot 852 which had sunk the steamship 'Pelous' (comma) in violation of the laws and usages of war were concerned in the killing of members of the crew of the said steamship." I feel that it is important before the accused plead to this charge that they do understand to what they are pleading.

THE JUDGE ADVOCATE: I think there is no real difficulty about construction. The phrase: "In violation of the laws and usages of war" qualifies the word "concerned" and what follows it, and not "sunk". That is to say your second interpretation is the correct one, and the charge is to be read as if a comma followed the word "Pelous". That is right is it not Col. Halse?

COL. HALSE: Yes.

THE JUDGE ADVOCATE: Do you want to say anything more about it Major Lermom?

MAJOR LERMON: No.

THE JUDGE ADVOCATE: You were making that point on behalf of all the accused were you, by arrangement with your colleagues?

MAJOR LERMON: That is so.

THE JUDGE ADVOCATE: Let that be clearly understood that the phrase I read out: "In violation of the laws and usages of war" qualifies the words that follow it and not the words that precede it. Kapitänleutnant Eck, you say you are not guilty?

THE ACCUSED, ECK: Not guilty.

MAJOR LERNON: I feel that your statement ought to be translated into German so that the accused understand it.

THE JUDGE ADVOCATE: This is a purely technical point as to the meaning of the charge. Do you want every matter of that sort translated into German? I gather that your colleagues, or some of them, understand English, do they not?

MAJOR LERNON: Not all of them.

DR. TODSEN: We have discussed the matter with the accused and we spoke of both possibilities, and it might be better if the accused are now told which is right.

THE JUDGE ADVOCATE: Certainly; if you want that it shall be done.
(To the interpreter): Will you tell the accused this: The phrase "in violation of the laws and usages of war" in the charge qualifies the allegation as to killing and not the allegation as to sinking the "Pelcus".

Leutnant Hoffmann, are you guilty or not guilty of the charge?

THE ACCUSED, HOFFMANN: Not guilty.

THE JUDGE ADVOCATE: Marine Oberstabsarzt Weisspennig, are you guilty or not guilty of the charge?

THE ACCUSED, WEISSPENNIG: Not guilty.

THE JUDGE ADVOCATE: Kapitänleutnant Lenz, are you guilty or not guilty of the charge?

THE ACCUSED, LENZ: Not guilty.

THE JUDGE ADVOCATE: Gefreiter Schwender, are you guilty or not guilty of the charge?

THE ACCUSED, SCHWENDER: Not guilty.

THE JUDGE ADVOCATE: Do you wish to apply for an adjournment on the ground that any of the regulations have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

MAJOR LERNON: May I answer that before the interpretation? May I, with the permission of the Court, speak on behalf of all the accused on this matter also. It is with very great regret that after considerable deliberations the defending counsel have come to the conclusion that they are forced to ask this Court for an adjournment. If I may I will give you an outline of the reasons why they ask for an adjournment. Of the counsel present today, Dr. Wulf was briefed on the 13th October, Captain Meckel was briefed on the 12th October, Dr. Pabst was briefed on the 9th October, but could not take up the case until the 13th October because he was acting as a Judge Advocate at Cuxhaven from the 9th to the 12th October, Dr. Todsen was briefed on the 13th October, and I myself was briefed for the defence of the accused Lenz also on the 13th October. In my submission, even under normal conditions, four days is an unconscionably short time to prepare a defence of such magnitude and such a character as this one. That is particularly so under the conditions in which we have to work here in Germany where communications are extremely bad and where the relevant libraries and books of reference have been largely demolished in Hamburg. The Court will appreciate that this case is, as far as I am aware, virtually without precedent and likely to establish a test case for future trials of this character. I submit to the Court that it would be most unfortunate if in a case which establishes a precedent of this kind, and which involves possible

convictions and sentences of death on the accused, if the defence entered the case as they are doing at the moment only half prepared.

If I may state quite briefly, in the case of Captain Kock certainly, and it will also very largely apply in the case of the other accused, the defence is largely one of operational necessity. We can prove that by calling certain expert witnesses, high officers of the German naval staff. We know the names of these officers, we know exactly where they are, we asked for them almost as soon as we were briefed, but these officers have not yet arrived, and it is our contention that they are vital for the defence. Furthermore, in that connection it is necessary for the defence to produce certain documents of the D.U., the German naval organisation. We know where these documents are to be obtained and we think we can get hold of them, but owing to the short time available we have not yet been able to do so. Then, you will readily appreciate that this Court administers international law, and it was not until late last night that one of the defending counsel, Dr. Pabst, succeeded in getting any books on international law at all.

Finally, you will readily appreciate that the German counsel here are not familiar with the normal rules of procedure in English Courts and they do things rather differently; for example, in examining witnesses, the witness tells his whole story to the Court under the German rules, while under our rules we obtain his statement by question and answer. I submit that four days is a ridiculously short time for them to prepare, and in fact they have not managed to prepare, their case. I therefore most earnestly and strongly ask this Court for an adjournment of a minimum of one week.

THE JUDGE ADVOCATE: Col. Halse, first of all, before you answer what has been said, do you accept the statement of fact that the respective advocates for the defence were not instructed until the dates that Major Lermont has stated?

COL. HALSE: I have got no reason to suppose the contrary. My instructions are that they were charged on the 6th October, and they were then given an opportunity of having counsel, but as to when counsel were in fact obtained I accept Major Lermont's statement.

THE JUDGE ADVOCATE: What do you say about this application?

COL. HALSE: This application must be in the hands of the Court obviously, but I do submit that these accused knew full well what they were going to be charged with some considerable time ago when they were first interrogated by the Admiralty, that they could have got all the documents available when they were brought over, or that they could have arranged for the documents to be available when they were brought over. I submit that from the 6th October until today was ample time in which to get those documents. If the defence want any assistance in regard to getting these high German Admiralty officials, the prosecution will do what they can to get them here, but I can do no more than that. On behalf of the prosecution I do object to this application.

THE JUDGE ADVOCATE: Major Lermont, I think the Court might be helped if they knew this: Would it meet your objection if the trial were allowed to proceed at any rate to the end of the prosecution's case, and if by that time the witnesses whom you desire to call for the defence are not here, then your application could be renewed. Would that meet your case?

MAJOR LERMONT: May I consult my colleagues on this matter for a moment?

THE JUDGE ADVOCATE: Yes, it is desirable that you should.

(The defending counsel confer)

MAJOR LERMONT: The defence is very grateful, and we will accept that suggestion.

THE JUDGE ADVOCATE: Then it is understood that if at the close of the prosecution's case the defence desire an adjournment, they are then at liberty to renew the application that is now made. Do you want that translated into German?

MAJOR LERMON: No, I do not think so.

THE JUDGE ADVOCATE: I shall now put the adjournment question to each of the accused. The question is this: Do you wish to apply for an adjournment on the ground that any of the regulations have not been complied with and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?

THE ACCUSED, ECK: I agree.

THE JUDGE ADVOCATE: Is the answer "No", subject to what the Court have just agreed with the defending counsel?

THE ACCUSED, ECK: Yes.

(The other four accused all reply "No")

THE JUDGE ADVOCATE: They all say that they have no objection to the trial proceeding now?

THE INTERPRETER: That is right.

THE JUDGE ADVOCATE: That removes the possibility of an application for an adjournment at this stage on any other ground?

MAJOR LERMON: That is so.

COL. HALSE: If my friend will let me know the names of any witnesses he wants I will do the best I can to get them here. Before I open the case I have three applications to make. First of all, Mr. Mossop of the Legal Branch of the Admiralty is here, and I would like him to remain in Court during the trial. He is giving evidence of an interview he had with two of the accused when a statement was taken from them.

THE JUDGE ADVOCATE: I am addressing this question to all the defending counsel; Is there any objection to Mr. Mossop, who will be a witness as to the taking of a statement, remaining in Court? Major Lerman, will you ascertain the views of your colleagues in respect of that?

MAJOR LERMON: That is perfectly all right.

THE JUDGE ADVOCATE: Do not answer this question if it is in any way embarrassing; I take it there is no intention to challenge the admissibility of those statements, because that might affect the propriety of Mr. Mossop remaining in Court?

MAJOR LERMON: Yes, I think I can say that at this stage.

COL. HALSE: My second application is that you have got affidavits by two officers of Naval Intelligence, and I would make application that the names should not be mentioned in Court, but I will write them on a piece of paper and refer to them as "W" and "M" respectively. It is desirable that their names should not be known in this Court.

THE JUDGE ADVOCATE: Very well. The Court will adopt that course.

COL. HALSE: My third application is to ask you to make a statement to the Press to request them to keep out of the papers the names of any of the German witnesses who will give evidence for the prosecution. They are members of the crew of the submarine in question.

THE JUDGE ADVOCATE: I know that the Press is always extremely good about requests of that kind. You will readily appreciate that it is desirable for the safety of these sailors who are going to give evidence for the prosecution that their names should not be published, and I am sure you will co-operate about that.

COL. HAISE: May it please the Court. This Court is convened under Royal Warrant from His Majesty, which empowers a Military Court to try enemy nationals for war crimes committed in any war commencing subsequent to 2nd September 1939. In this case, to give you an example of what powers a war crime court has, the Court is composed, because nationals of other countries are concerned inter alia, of two officers of the Greek Navy, and because the accused are members of the German Navy there are on this Military Court two British naval officers.

Briefly the facts of this case are as follows. On the 8th March 1944, the s.s. "Peleus", a Greek ship chartered by the Ministry of War Transport, left Freetown in ballast for South America. She was, at the time of the incident I am going to relate, unescorted and in ballast. The crew consisted of a variety of nations; there were eighteen Greeks, eight British seamen, one seaman from Aden, two Egyptians, three Chinese, a Russian, a Chilean and a Pole on board.

On the 13th March at about 1750 hours, one of the witnesses whom I will call before you, observed two torpedoes on the port bow. Those torpedoes hit the "Peleus" and she sank within about two minutes. The position of the sinking was about 2 degrees South and 10 degrees West, well in the middle of the Atlantic Ocean. Apparently the majority of the members of the crew of the "Peleus" -- unfortunately I cannot tell you how many of them -- got into the water and got on two rafts and wreckage that was floating about.

The submarine surfaced and called over one of the members of the crew, the 3rd Officer. He was interrogated as to the name of the ship, where she was bound, and other information. He then had his lifebelt or buoy taken away from him, presumably as some evidence of the sinking, and he was then sent back to the rafts. The submarine then proceeded to open fire on the survivors in the water and on the rafts with a machine-gun or machine-guns, and also threw hand grenades at the survivors with the result that all the crew in the water, so far as we can ascertain, were killed or died of their wounds, except for three, whose names were Liossis, who was the first officer, a seaman called Argyros, and a British seaman called Rocco Said. These men remained in the water for over 25 days. They were then picked up by a Portuguese steamship and were taken into port.

Unfortunately, I cannot call before you in person those three survivors. However, they all made affidavits to an officer of the South African Naval Forces at Capetown, and two of them made affidavits in London at a later stage, and under the regulations of the trial of war criminals I shall read those affidavits to you.

These affidavits will tell you that there was no opportunity of saving themselves, that without any warning the submarine opened fire, that a number of people were certainly killed by the firing, that there was one member of the crew who survived for 25 days when he eventually died of gangrene, that during the night the submarine remained in the vicinity of the sinking sailing round and firing at intervals into the rafts.

There is some talk in the affidavits of hearing the Germans say in English: "All are killed", and: "kill all". I think one must treat that with a good deal of licence, because for Greek people to hear something said by Germans in English seems rather strange; but one can well imagine their state after having been in the water or on rafts for over a month, and their recollection of what happened may have been, as to minor facts, rather hazy.

There is one other suggestion made in the affidavits which I think I ought to mention, and that is that two at least of the deponents referred to gas. I understand that there is no question of gas being used, and I am not alleging that gas was used. I understand, and the naval members of the Court will know more about this than I do, that when a torpedo explodes some gasses are let loose, and there is a smell that might make one think that one was being gassed; but there is no suggestion by the prosecution that these men were in fact gassed by the crew of this U-boat.

So much, very briefly, for the facts from the British side. Later in the year a U-boat was attacked from the air on the East coast of Africa, and she was compelled to beach. Her log was found, and in it there was a note that on the 13th March 1944 she had torpedoed a boat in the approximate position in which the a.s. "Peleus" was torpedoed. That U-boat was the U-boat 852. She was commanded by the accused, Kapitänleutnant Eck, and among its crew were the other four accused, three of them being officers and the other being, I understand, in the position of a prospective officer.

As a result of this being ascertained the members of the crew were brought back to the U.K. where they were interrogated. Five members of the crew made statements which were made use of when interviewing the accused now before the Court. I shall call those five members of the crew before you, and they will tell you that they saw the accused, Lenz, Schwender and Hoffmann, and also Weisapfennig firing the machine-guns and throwing grenades in the direction of the rafts which were floating about in the water. They were doing it quite indiscriminately, and it went on for some considerable time.

The crew of the submarine say that she left the scene of the sinking about 0100 hours on the morning of the 14th. The survivors of the "Peleus" say that she did not leave until about dawn. That is a matter which will have to be considered by you, and you may think it quite immaterial as to what time she left so long as you are satisfied that in fact the members of the crew were firing at the survivors of the "Peleus" when in the water.

Two of the members of the U-boat 852 were interrogated, and statements were taken from them. The first one was the fourth accused in the dock, Lenz. He made a statement setting out his early career and went on to say that the ship was sunk, that he interrogated one of the members of the crew, and then the Captain ordered him to eliminate all traces of the "Peleus" by firing at her survivors. This accused saw Schwender, the only other rank involved, actually firing at the survivors, and he goes on to make this observation: "Obergefreiter Schwender was about to fire his machine-gun at this target when I took it from his hand and fired it myself in the general direction of the target indicated. I did this because I considered that Schwender, long known to many as one of the most unsatisfactory ratings in our boat, was unworthy to carry out such an order". You may think that such an observation made by an accused indicates his state of mind at the time, although he says in his statements that he objected to the order which was issued by his Captain.

The other member of the crew who was seen was Kapitänleutnant Eck, the Captain. He made a statement in 1944 with regard to any orders having been issued to him to destroy the survivors of a ship which had been sunk, and in his statement he said: "Neither before sailing or on the passage did I at any time receive orders to shoot or otherwise to eliminate survivors on any vessel that my ship might sink." That, in my submission, disposes of any suggestion which might be made so far as Eck is concerned that he did this deed on orders from his superior officers, the V.D.U., or from his Flotilla Commander. He was later seen by another officer of Naval Intelligence, and he then made a statement with regard to the destruction of the survivors. I do not know whether any objection

is going to be taken to that statement?

DR. TODSEN: Yes. If I might object to the reading of the statement for the following reasons. First of all, I am told that this statement was taken from Kapitänleutnant Eck, Eck not having been cautioned in due form in advance; but that is not the only reason. Eck was expressly told by the officer who interrogated him -----

THE JUDGE ADVOCATE: If I may interrupt; the position about the admission of or objection to such a statement is this. It is for the prosecution to show that it was taken properly and it is admissible, and if they fail to discharge that onus, then the statement cannot be received. It is therefore better that you should indicate when the time comes to put the statement in evidence that you object to it, and the burden will then be thrown on the prosecution in showing that it can properly be admitted, and then you will be able, if you so wish, to answer any evidence that is brought, or anything that is said on that matter; so you will do better to wait until that happens.

COL. HALSE: Then I will not read the statement. Those briefly are the facts that the prosecution will seek to prove in this case.

I think it would be the easier way if I first read the affidavits of the Greek and British survivors in order that we can have the picture from the beginning and from that side, and then to call the German witnesses to give their story of what happened on the U-boat on that occasion.

The first affidavit was sworn at Cape Town on the 7th June 1944 by Antonios Cosmas Liossis, the late Chief Officer of the Steamship Peleus, and it reads as follows:- "I hereby declare after my ship was torpedoed on 13th March, 1944, I was thrown into the sea by the explosion which knocked me unconscious, and I came to in the sea. I clutched hold of a hatch cover to save myself. The U-boat had surfaced and the crew shouted "What is the name of the ship?" Later I transferred to a raft with two others, and we joined another raft with more survivors. The U-boat approached and took the second officer aboard for interrogation."

MAJOR LERMON: The defence have never received a copy of this affidavit.

THE JUDGE ADVOCATE: The affidavit I have got is an affidavit that was sworn on the 1st September at the Admiralty.

MAJOR LERMON: Yes, that is the one we have got.

COL. HALSE: There were two affidavits sworn by this man.

THE JUDGE ADVOCATE: First of all, is it accurate to say that the defence have not had a copy of the affidavit you were reading just now?

COL. HALSE: They say so.

THE JUDGE ADVOCATE: Do not you know?

COL. HALSE: I do not know at all. I thought they had a copy.

THE JUDGE ADVOCATE: Will you find out whether that is so?

COL. HALSE: Would Major Leron tell me if he has got an affidavit of Dimitrios Argyros sworn on 7th June, the same day.

MAJOR LERMON: Yes. I have got that.

COL. HALSE: It would appear that the other documents have not been copied for the defence. I will have copies made and let the defence have them.

THE JUDGE ADVOCATE: What do you say, Major Leron?

MAJOR LERMON: I think it is necessary for us to have the copies.

THE JUDGE ADVOCATE: There is no question about your having the copy; but are you content to receive the copies at the earliest time they can be supplied to you or do you make any other application?

MAJOR LERMON: Yes, I think we can accept that. I think the objection at this point is that while we have not got the copies in front of us we cannot follow whether the learned prosecutor is in fact following the document or not.

THE JUDGE ADVOCATE: I think the court is prepared to trust him to that extent.

DR. TODSEN: That is not my objection; but if we have not got a copy we are not able to make any notes about what has been said in this statement and as the trial goes on we have to remember a lot of things and we might forget something which might be of importance to the accused. Therefore I propose

that the prosecutor leaves out this statement of which we have not got a copy now and later on perhaps he puts in the statement of that witness.

THE JUDGE ADVOCATE: Col. Halse, are copies of this affidavit available?

COL. HALSE: I can have them done now. They can be copied in this building.

THE JUDGE ADVOCATE: Is it convenient for you to postpone the reading of this affidavit until the defence have got copies of it?

COL. HALSE: Yes.

THE JUDGE ADVOCATE: That will meet your objection, will it not?

MAJOR LERNOW: Yes.

COL. HALSE: I will go on to read the second affidavit sworn by the same man, Liessis, on 1st September 1944, which reads as follows:- In the matter of the sinking of the S.S. Pelous and in the matter of the deaths of D. Constantinides and other members of the crew. I Antonios Comas Liessis of 46 Princes Square, W.2. make oath and say as follows:- (1) I was born at Kiles in the Kingdom of Greece on the 7th day of November 1906 and I am a Greek citizen. I first went to sea in 1923. (2) I escaped from Greece after the German occupation on the 16th July 1943 and joined the S.S. Pelous at Suez as Chief Officer. The Pelous sailed for the United Kingdom, thence to Canada and back to London. She then loaded at Inningham for Algiers and sailed from Algiers for the River Plate calling at Gibraltar and Freetown. The Pelous sailed from Freetown on the 8th March 1944. (3) On the 13th March 1944 I was on watch and at about 1920 I saw the tracks of two torpedoes approaching on the port beam. I ordered the helmsman to comb their tracks but they could not be avoided. I did not remember anything more until I found myself in the water. I swam for a bit until I found some wreckage to which I clung. Whilst I was hanging on to a hatchcover I heard someone whistling. I found that it was a sailor called Dimitrios Constantinides, who said that he had nothing to cling to so he joined me. We made for a raft which we could see in the distance. Shortly afterwards the submarine surfaced and proceeded slowly with two men on the forward deck who were shouting to find out the name of my ship. The submarine passed us and we then got on to the raft where we found a Russian sailor whose name was Pierre Neuman. We rowed for a bit and then got near to another raft. The Russian got on to it and he was joined by three men who were hanging on to bits of wood in the water. Their names were Agis Kephelas, the Third Officer, Stavros Sogias, a greaser, and a Chinaman. The submarine came back and hailed the Third Officer's raft. The Third Officer was ordered to go aboard the submarine and I subsequently learned from him that they asked him the name of my ship, where she was bound for and from what port and also questions relating to convoy routine, the number of warships in Freetown and whether convoys were escorted by aircraft carriers. They kept a lifebuoy which the Third Officer handed them and then told him to go back to his raft and assured him that no doubt help would be coming next day. (4) The submarine left the Third Officer's raft and made a sweep. I could see most of the rest of the crew in the water, clinging to wreckage and shouting and blowing whistles. We all called to them and told them that we were coming to help. We lashed two rafts together and very soon after the submarine re-appeared and hailed us to go nearer. As we approached the submarine suddenly opened fire with a machine gun. We all ducked and I could hear cries of pain from Constantinides who was hit by bullets in several places. The rafts were riddled with bullet holes but they did not sink because the tanks were filled with buoyant material. The Germans also threw hand grenades at us, one of which wounded me. My head was under a bench so that I was only hit in the right shoulder and in the back. They also threw grenades at the other raft. The Germans on the submarine were shining their signalling lamp to see that

everyone was finished off but I lay very quiet and as my back was covered with blood I think they decided that I was dead. The submarine made its way to the floating wreckage and kept on firing big bursts from their machine guns; later firing was intermittent. (5) Just before dawn the submarine went away and I found that Constantinides was dead. I was joined by the Third Officer who had fallen from his raft into the sea and had been hanging on to my raft. He was very badly wounded in the right arm from bullets. As many sharks had gathered round the wreckage and we did not want to see Constantinides eaten we waited until night-fall to throw him overboard. (6) We were both in great pain but we found some drugs and medicines and collected biscuit and water and made an awning to protect ourselves from the sun. On the 4th day after the sinking we sighted a raft with Rocco Said and Argyros on it and on the eighth day they got near enough to transfer to our raft, abandoning theirs. Twentyfive days after the sinking the Third Officer died of his wounds. (7) We had made a sail and were using an oar as rudder and made for the coast of West Africa. On the 20th April we sighted a Portuguese steamer at a great distance. Fortunately they saw us, altered course and picked us up. The ship was the Portuguese S.S. Alexandre Silva. We were helped aboard and given good care and attention and seven days later we reached Lobito."

Then follow the names of the crew and I can prove that more satisfactorily from the Ministry of War Transport and I suggest that be omitted.

THE JUDGE ADVOCATE: Yes.

(Affidavit by Antonios Liassias dated 1st September 1944 is marked "B", signed by the president and attached to the proceedings).

COLONEL HALSE: I do not know what you are going to do about translating that affidavit.

THE JUDGE ADVOCATE: You have all had copies of this affidavit, have you?

MAJOR IERMON: Yes. I do not think it is necessary to translate this affidavit.

THE JUDGE ADVOCATE: Will you get it quite clear from your colleagues whether they would like it translated.

DR. TODSEN: No, I do not think it is necessary to translate it to the accused because all the accused know what is in that statement.

THE JUDGE ADVOCATE: Dr. Wulf, do you agree to that?

DR. WULF: Yes.

DR. PARST: I agree.

THE JUDGE ADVOCATE: That being so, that need not be translated.

COL. HALSE: The next affidavit is the affidavit of Rocco Said, sworn at the Admiralty on the 16th August 1944, which reads as follows:- "I, Rocco Said, of 46, Princes Square, Bayswater in the County of London, Greaser, make oath and say as follows: (1) I was born at Constantinople in the year 1905 and I am a British subject. My father was a British subject and my mother was Greek by birth. I lived in France between 1924 and 1935 and I then came to England where I took up employment as a furrier. I had been to sea in my youth and I went back to sea in 1941 as 3rd Engineer of the Mount Taurus. I left this ship, was ashore sick and joined the S.S. Peleus in January 1944. (2) The Peleus sailed from Freetown on March 8th, 1944 bound for the River Plate. At about 1945 on the 13th March the Peleus was torpedoed on the port-side, one torpedo striking in

the way of No.2 Hold and one in the way of No.3 hold. It was clear that the ship would sink immediately and the crew jumped overboard. I caught hold of some wreckage and the majority of the crew were holding on to wreckage or were on rafts. (3) The ship sank immediately and soon after the submarine surfaced and began to machine-gun the men in the water and ran the wreckage. I saw men throw up their hands and sink, and rafts turn over. The submarine left the vicinity at dawn on the 14th March. At about 1600 on the 14th March I got on to a raft on which I found a Chinese fireman who had been a member of the crew, he was lying dead and had injuries to his face and chest from the explosion of grenades. I climbed on and helped Dimitrios Argyros to climb on as well. The raft was much damaged by the explosion of hand grenades and machine-gun fire. We stayed on this raft the whole night and next day until at about 1800 we found another raft in much better condition to which we transferred. No one was on this raft. Six days later we found another raft on which were the 1st Officer and the 3rd Officer. (4) I found that the 3rd Officer was suffering from a broken arm caused by the explosion of a hand grenade. I helped to nurse him and took splinters from a hand grenade out of the wound. He died 25 days after the sinking of the Peleus from gangrene and yellow fever. The raft on which we found him and the 1st Officer had its water tanks perforated by machine-gun bullets and it was also damaged by the grenades. (5) On the 20th April 1944 the raft was sighted by the Portuguese S.S. Alexandre Silva and we were picked up. The raft was taken on board the ship and was examined by the crew. (6) During the time that I nursed the 3rd Officer he told me the following story"

MAJOR LERMON: I object to this; it is third-hand.

THE JUDGE ADVOCATE: What do you say ?

MAJOR LERMON: While the regulations do permit affidavits which would not be admissible under the normal rules of evidence there is nothing in the regulations which says that an affidavit which also includes a statement from a third party should be included in a document which may be introduced before a court of this character.

THE JUDGE ADVOCATE: This is comparable to a dying declaration, is it not ?

MAJOR LERMON: I think the third officer died four or five days after this. I hardly think it can be described as a dying declaration.

THE JUDGE ADVOCATE: There is no doubt that the court have got power, if they think it right, to receive this, have they not ? You are not suggesting they have not that power ?

MAJOR LERMON: No, I am not suggesting that. I think you have the power to admit any document which you consider has a bearing on the case.

THE JUDGE ADVOCATE: There is no question about its relevance, is there ?

MAJOR LERMON: There is no question about its relevance. It is up to the court whether the court thinks it advisable to admit a document of this character.

THE JUDGE ADVOCATE: Do any of the other defending counsel want to say anything about this or were you speaking for all of them ?

MAJOR LERMON: I was not speaking for all of them.

DR. TODSEN: I back up Major Lermom in his objection.

THE JUDGE ADVOCATE: What do you think, Colonel Halse ?

COL. HALSE: I rely on regulation 8(1)(a), which says: "If any witness has died or is unable to attend or to give evidence or is, in the opinion of

the court, unable so to attend without undue delay, the Court may receive secondary evidence of statements made by or attributable to such witness."

THE JUDGE ADVOCATE: There is no question about the power to do this. The only question is whether the court ought to exercise the discretion which is created by the word "may" and do it. You say that in the circumstances of this case they should?

COL. HALSE: Yes. I submit that in view of the evidence - and in fact there is evidence - that this man died shortly after, at any rate before anybody else could see him, this statement should be admitted.

THE JUDGE ADVOCATE: Do you want to say anything more, Major Lerman?

MAJOR LERMON: No, except that on this point which the prosecutor brought up, under regulation 8(1)(a) the court may receive secondary evidence. This is hardly secondary evidence, it is almost tertiary evidence.

THE JUDGE ADVOCATE: It is quite clear that in a court which was bound by the ordinary English law this evidence could not be admitted; but for convenience and in view of the practical difficulties of obtaining evidence in cases such as this, this court is granted a discretion to accept statements of this kind if it is so disposed. The only question is whether in the exercise of your discretion this court thinks it right to receive this statement. You may think that it is just the kind of statement that the regulations contemplate.

(The court confer)

THE JUDGE ADVOCATE: The court have decided to admit the statement.

COLONEL HALSE: The affidavit continues: "Paragraph 6. During the time that I nursed the third officer he told me the following story:- 'Immediately after the sinking he and a Russian sailor and the 1st Officer and Konstantinides got on to a raft. The submarine came to the raft and called the 3rd Officer and the Russian on board for interrogation. The Germans wanted to know the exact name of the ship and to satisfy the Germans on this point they handed them a life-buoy with the ship's name on it which was kept as evidence of the sinking. The Germans also asked for the courses of other ships in the neighbourhood and the 3rd Officer gave inaccurate information on this point. They were then told to return to their raft and informed that the English would come and pick them up. They were standing on the raft when a grenade was thrown at them. The 3rd Officer's arm was broken and the 1st Officer was also wounded. Konstantinides died of wounds inflicted by the Germans on the 13th March and was buried at sea.' That was sworn at the Admiralty on 16th August 1944.

(The affidavit of Rocco Said, sworn on 16th August 1944, is marked "C", signed by the president and attached to the proceedings)

COL. HALSE: The next affidavit is an affidavit under oath before a lieutenant-commander of the South African Naval forces by Dimitrios Argyros, which reads as follows:- "I, Dimitrios Argyros, late Able Seaman of the Greek ship Poleus, sunk by German U-boat on the 13th March 1944, hereby declare that when the ship was torpedoed I jumped into the sea and clutched a hatch cover. All the survivors were concentrated in one area. The U-boat surfaced and charged through the wreckage, separating the survivors. The crew of the U-boat first threw hand grenades and later machine-gunned the survivors on the rafts and those clinging to the wreckage. All the members of the crew were killed except four of us, one of whom died twenty five days later from a shattered arm which went gangrenous. There was a strong smell of gas and I threw water into my face to stop the gas from affecting my breathing. All night the U-boat circled the rafts and wreckage, firing many bursts of machine-gun fire and using a searchlight. I

heard the U-boat crew shout "Kill All" in English. The U-boat left about half an hour before dawn." That is signed by the deponent and it is sworn on the 7th June 1944.

(Affidavit of Dimitrios Argyros dated 7th June 1944 is marked "D", signed by the president, and attached to the proceedings)

COL. HALSE: I have here two affidavits, from the clerk to the ship owners and from the Ministry of War Transport. I have got the originals here, which I will read, and I will hand up copies.

THE JUDGE ADVOCATE: You have had these, have you?

MAJOR LEMON: Yes, I have had these this morning.

COL. HALSE: They are formal affidavits proving the names of the members of the crew of this ship. The first one reads as follows:- "In the matter of the sinking of the S.S. Peleus and in the matter of the death of members of the crew. I Elias Nicolas Hadjilias of Harlesden in the County of Middlesex Clerk of Hadjilias & Company Limited make oath and say as follows: (1) I am a clerk in the employ of Hadjilias & Company Limited of Bury Court House 7/8 Bury Court London E.C.3. Shipbrokers and have served them in that capacity since the 2nd January 1943. (2) Hadjilias & Company Limited were agents for the Greek s.s. Peleus and in such capacity were concerned with the management of the ship and the provision of her crew. (3) The names and nationalities of the crew of the s.s. Peleus were as follows".
I do not know if you want them read out.

THE JUDGE ADVOCATE: This is merely a meaningless string of names. Provided it goes in, you do not want it read out, do you, Major Lemon?

MAJOR LEMON: No.

COL. HALSE: The statement continues: "The s.s. Peleus was sunk by enemy action off Freetown on the 13th March 1944 and only three men namely Antonios Liassis Rocco Said and Dimitrios Argyros survived."
That is sworn at the Admiralty on the 9th October 1945.

(Affidavit of Elias Nicolas Hadjilias is marked "E", signed by the president, and attached to the proceedings)

COL. HALSE: Then there is an affidavit by William John Killingback which reads as follows:- "(1) I am and have been since the 5th April 1938 the Registrar General of Shipping and Seamen in the Ministry of War Transport. (2) That in the course of my duties as Registrar General of Shipping and Seamen I received information of the sinking on 13th March 1944 of the Greek s.s. Peleus."

Then follows an extract from the Defence Regulations which I think is unnecessary, and also a return showing the names of the British members of the crew.

(Affidavit by William John Killingback dated

9th October 1945 is marked "F",

signed by the president, and

attached to the proceedings).

JOHANN CEIRNIAK is called in, and, having been duly sworn, is examined by Colonel HALSE through the interpreter as follows :-

- Q Is your name Johann Ceirniak ? A. Yes.
- Q Were you a Matrosenobergefreiter ? A. Yes.
- Q Serving on Unterseeboot 852 ? A. Yes.
- Q In 1944 ? A. Yes.
- Q When did you join U Boat 852 ? A. April 1945.
- Q When did she go on her first war patrol ? A. 1944.
- Q What month ? A. January.
- Q Did an incident occur on the 13th March ? A. Yes.
- Q Was a ship seen by the U Boat ? A. Yes.
- Q At what time of the day ? A. I cannot say for sure today.
- Q At about what time - before dark or after dark ?
A. During the day, about 6 o'clock in the evening.
- Q What action was taken by the U Boat ?
A. A ship was in front of the U Boat and the U Boat tried to catch up with it.

COL. HALSE: I do not know if you would object to my leading on this. It would obviously save a great deal of time.

MAJOR LERMON: We have no objection to leading on matters which are not in dispute.

COL. HALSE: Were two torpedoes fired at the ship ? A. Yes.

Q Did she sink ? A. Yes.

Q And the members of the crew took to the water ?
A. They could not be seen because it was too dark.

Q Was the U Boat then submerged ? A. On the surface.

Q Was one member of the crew of the ship ordered over to the U Boat ?
A. Yes.

Q Was he interrogated ? A. He was interrogated.

Q By whom ? A. By Kapitänleutnant Lenz and Leutnant Hoffmann.

Q Do you recognise either of those persons in Court today ?
A. I can see him.

COL. HALSE: Will Hoffmann stand up. (The Accused Hoffmann stands up.)

THE JUDGE ADVOCATE: Is it the first, second, third, fourth or fifth ?
A. The second.

Q The second is who ? A. The second is Leutnant Hoffmann, and the fourth is Kapitän Lenz.

COL. HALSE: How long did the interrogation last ?

- A. I cannot say for sure today, but it did not last longer than a few minutes.
- Q Did Lens and Hoffmann then report to the bridge ?
A. They went back and reported to the ship's commander the proceeds of the interrogation.
- Q Meanwhile where were the rafts of the ship that had been sunk ?
A. I could not observe the whole area because it was so dark, but in the sector I had charge of I could see some rafts while this interrogation was going on.
- Q Was anything then said about the rafts ? A. No, I cannot remember it today.
- Q What happened on the U Boat after the members of the ship had been interrogated ? A. The U Boat left the vicinity of the sinking.
- Q What happened then ? A. They ran on for about a thousand metres and turned back and came back again.
- Q Was any action taken on the bridge by the captain ? Was any order given by the captain ? A. No, I cannot remember.
- Q Did you see or hear Lieutenant Hoffmann say anything ?
A. The officers talked amongst themselves but I could not make out what they were talking about.
- Q Did you see anything being brought on to the bridge ?
A. Yes, I saw machine guns being brought on to the bridge.
- Q Were they mounted on the bridge ? A. Yes.
- Q Did anybody make use of the machine guns that were so mounted ? A. Yes.
- Q Who ? A. Lieutenant Hoffmann and Marine Oberstabsarzt Weisspfennig.
- Q Do you see Weisspfennig in Court ? A. Yes.
- Q Which man is he ? A. The third (indicating the Accused Weisspfennig).
- Q What were these two men firing at or in the direction of ?
A. They shot in the direction of starboard.
- Q Could you see what there was on the starboard side ?
A. I saw wreckage and some rafts.
- Q Could you see whether there was anybody on the rafts ?
A. It could not be observed very well because it was too dark.
- Q For how long did the shooting go on ? A. A few bursts were fired and then I was relieved from my watch.
- Q Did you then go below ? A. Yes, I went below.
- Q Who was on the bridge during the firing ? A. Brauning, Schenk, Lieutenant Hoffmann, the Commander ----
- Q Do you recognise the Commander in Court ? A. Yes.
- Q Which is he ? A. The first (indicating the Accused Eck). I myself was on the bridge at the time too, and the medical officer, Weisspfennig; who else might have been on the bridge I do not know.

- Q Was any announcement made over the loudspeaker later on ? A. Yes.
- Q Who made it ? A. The Commander made this announcement.
- Q What was the announcement ? A. I cannot remember it today.
- Q Can you remember any of it ? A. Something was mentioned about Allied aeroplanes bombing Germany.
- Q Was any mention made of the ship which had been sunk ?
A. I could not say today.
- Q When you were on deck did you have any observation duty to perform ?
A. I was on watch on the bridge and had to observe a certain sector.
- Q Were you given any special orders about observing ?
A. No, we did not receive any special orders but were cautioned to pay close attention to what is going on.

Cross-examined by Dr. TODSEN.

- Q Where were you standing when the "Peleus" was sunk ?
A. I stood on the bridge.
- Q Was the U Boat submerged before the attack or was it surfacing ?
A. On sighting the ship the U Boat remained surfaced.
- Q Did you see one or two machine guns or several brought on deck ?
A. Two machine guns were brought on deck.
- Q Immediately or later on ? A. In the time between when we left the vicinity of the sinking and returned to it again the machine guns were brought on deck.
- Q Did you go far off the sinking ? A. About a thousand metres.

Cross-examined by Dr. PANET.

- Q Who fired first ? A. Lieutenant Hoffmann.
- Q Who fired afterwards ? A. Oberstabsarzt Weisspfennig.

MAJOR LERMON: No questions.

COL. HALSE: No re-examination.

(The witness withdraws.)

THE JUDGE ADVOCATE: The Court have decided that it is not necessary to read over to each witness the evidence that he has given.

WOLDEMAR RANFT is called in, and, having been duly sworn, is examined by Colonel HALSE through the interpreter as follows :-

- Q Are you Lieutenant Woldemar Ranft ? A. Yes.
- Q Were you a member of the crew of the U Boat 852 in 1944 ? A. Yes.
- Q Do you remember the evening of the 13th March, 1944 ? A. Partly.
- Q Do you remember a ship being sunk by your U Boat ? A. Yes.
- Q At the time of the sinking where were you ?
A. At action stations, amidships.

- Q Were you below decks ? A. Below decks.
- Q Did you later go on deck ? A. Yes.
- Q About how long after the sinking ? A. I cannot remember very well; it may have been one hour, it may have been two.
- Q What was the time of day ? A. In the evening.
- Q Could you see anything ? A. As I came on to the bridge I could see nothing at all because the light from the interior of the boat was in my eyes.
- Q When you got used to the darkness could you see things ? A. Yes.
- Q What did you see on deck ? A. There was nobody on deck but part of the crew was on the bridge.
- Q Who were on the bridge ? A. I cannot remember any single persons, but as far as I can remember it was the guard which was at action stations.
- Q Do you see anybody in Court now who was on the bridge that night ?
A. The Commandant of the U Boat was on the bridge.
- Q Can you see him now ? A. Yes.
- Q Which is he ? A. The furthest away from here.
- Q Did you see anybody else on the bridge ? A. Kapitan Lenz and Leutnant Hoffmann.
- Q Do you recognise them in Court ? A. The second and the fourth.
(Indicating the Accused Hoffmann and Lenz.)
- Q While you were on deck did you hear any noise ? A. Yes.
- Q What was it ? A. I noticed a few shots down below and then went up on the bridge.
- Q Where did the shots come from ? A. They came from the bridge.
- Q What type of shots were they ? A. Machine gun bullets.
- Q Who was firing the machine guns?
A. As I came on to the bridge Schwender fired a few shots.
- Q Do you see him in Court ? A. Yes.
- Q Which is he ? A. The man on the extreme right (indicating the Accused Schwender).
- Q In which direction were the shots being fired ? A. Fired on to the sea.
- Q Could you see anything in that direction ? A. It was partly moonlight but obscured in parts again and the only thing I could see were parts of the wreckage.
- Q For how long did Schwender go on firing ? A. I cannot say that, but as far as I remember only for a short time.
- Q Did anybody fire after him ? A. I then saw Kapitan Lenz take over from him and fire a few shots. He pushed Schwender away with some force when he took over the machine gun.

Q For how long did the firing go on ? A. The actual firing only took a few seconds.

Q Was there anybody else firing ? A. I saw nobody else.

Cross-examined by Dr. TODSEN.

Q Did you fire in the direction of the sea ? A. Yes.

COL. HALSE: Is that the correct translation ?

THE JUDGE ADVOCATE: Will you put the question again ?

DR. TODSEN: Did you fire in the direction of the sea, the water ? A. Yes.

Q Did you notice any bigger parts of wreckage on the sea ?
A. I cannot understand what you mean by "bigger parts of wreckage".

Q I should like to point out the difference between bigger parts of wreckage and smaller beams which cannot go below sea water any more.
A. The only thing I could see, as it was of course rather dark at the time, were single beams and planks in the water.

Q Did you see that shots were fired at single beams ?
A. The fire was directed from a great distance and I could not observe whether they were aimed at single beams.

Q What was the distance from the U Boat to the actual beams that were aimed at ?

THE JUDGE ADVOCATE: He has not yet said that anything was aimed at beams. Put it to him again. (To the witness): Could you see at what the machine gun was being aimed ?
A. In my opinion on to bits of wreckage that were floating.

DR. TODSEN: Do you understand by "parts of the wreckage" single beams ?
A. Yes.

Q At what distance were these beams ? A. I cannot give a precise answer to that but to my estimation about 600 metres.

Q Did you notice if anybody was clinging on to those parts of the wreckage ? A. No.

Q Did you notice at all that any human being was shot at ? A. No.

Q Did you hear any order by the Commander about the shooting before it actually happened ? A. No.

Q Did you consider at all what risk this firing of machine guns would have ? A. No. I should like to point out that only by the noise of firing was I attracted and came up on deck.

(Dr. Todsén asks a question in German which is not translated.)

THE JUDGE ADVOCATE: How does it help the Court to know what this witness thought ? You can ask him what he saw, but what he thought is not a matter of which the Court can take notice, is it ?

DR. TODSEN: I thought it would be of some help to the Court what impression this witness formed.

THE JUDGE ADVOCATE: The Court cannot consider the state of this man's mind; they are not interested in it. If you want to put to him anything that he saw and if you want hereafter to make the comment that having seen that or having established that fact a certain inference is to be drawn from it, you are at liberty to do so; but what this witness thought

is no concern of the Court.

COL. HALSE: Could the witnesses be instructed when they are being questioned in German not to answer until the question has been translated?

THE JUDGE ADVOCATE: Yes.

DR. TODSEN: I have no further questions.

THE JUDGE ADVOCATE: I did not want to stop you asking anything you wanted to put.

DR. TODSEN: No, I have nothing more.

Cross-examined by Dr. PABST.

Q When Schwender was firing the machine gun was there any moonlight?
A. Only partly all the time throughout the evening.

Q Did you see what Schwender was aiming at? A. No.

Q What was your impression of what he was firing at?
A. At first I was rather dazed about the whole affair and I did not consider at all why there was any shooting, but when I got my whereabouts and I could see slightly and I saw the beams floating about I thought they were firing at the same.

Q Did you see him actually firing at a beam or did you think that he would fire at one? A. I cannot say that with any kind of certainty because it is more than a year and a half ago.

Cross-examined by Major LERMON.

Q Did you see what Captain Lenz was shooting at? A. As far as I know he was firing at the beams, but as the water was rather roughish some of them might have landed in the water.

Q Did you see any large pieces of wreckage sticking out of the water?
A. No.

Re-examined by Colonel HALSE.

Q In the first question you were asked in cross-examination, I do not know if I misunderstood you, but I think you said: "I fired in the direction of the sea". Is that right? A. Who was firing?

Q The question was put to you: "Did you fire in the direction of the sea".

THE JUDGE ADVOCATE: Yes; his first answer was that there was firing in the direction of the sea; it was quite a meaningless answer.

COL. HALSE: I understood he said he was firing.

THE JUDGE ADVOCATE: No, he did not at that time identify anybody.

(The witness withdraws.)

(At 1230 hours the Court is closed.)

(At 1415 hours the Court re-opens)
(The accused are again brought before the Court)

Obersturmann HEINZ HARTMANN is called in and, having been duly sworn, is examined by Colonel Halse, through the interpreter, as follows:-

Q Obersturmann Heinz Hartmann. Is that your rank and name? A. Yes.

Q In March, 1944, were you a member of the crew of U Boat 852? A. Yes.

Q Were you the Navigating Petty Officer? A. Yes.

Q Will you look at this document? (Handed) A. Yes.

Q Is that the logbook of U Boat 852? A. Yes.

Q Does that show under date the 13th March the sinking of a ship? A. Yes.

THE JUDGE ADVOCATE: Have you ever seen that logbook before? A. I have written it myself.

MAJOR LEHMEN: The defence certainly have not seen it before.

THE JUDGE ADVOCATE: Well, you will have an opportunity. Colonel Halse, are you putting this logbook in to show the date of the sinking of the "Pelus"? That has not been challenged. I should refrain from putting it in until the defence ask for it.

COL. HALSE: If you please. (To the witness) Will you look at this document, the chart? (Handed) Do you recognise that? A. Yes.

Q Can you say whether that is the chart of the U 852? A. Yes.

Q Can you say from looking at that where the "Pelus" was sunk? A. Yes, I can; the date has been written down on it.

Q Can you give the degrees of latitude and longitude -----

THE JUDGE ADVOCATE: Who made this entry on the chart? Is it your entry? A. Yes.

Q You made the entry? A. Yes.

COL. HALSE: Can you give the latitude and longitude? A. 20 minutes south, 9 degrees 30 minutes west.

THE JUDGE ADVOCATE: I do not think you need to exhibit this.

COL. HALSE: If you please.

THE JUDGE ADVOCATE: None of you want either of these documents exhibited?

MAJOR LEHMEN: It is of some importance to the defence as to where the ship was in fact sunk.

THE JUDGE ADVOCATE: You can ask questions about it when you come to cross-examine.

COL. HALSE: I think at the time of the sinking you were in the control room? A. I was in the central part.

Q That is the control room, I understand. Did you come up to the bridge? A. Yes.

Q Did you see a ship sinking? A. Yes.

- Q After that was there an interrogation of the officers of the "Pelorus"?
A. Yes.
- Q Later did you see anything going up on to the bridge? A. Yes.
- Q What? A. Pistols.
- Q Anything else? A. And hand grenades.
- Q Who gave the orders for those to go up on to the bridge? A. I do not understand that question.
- Q Who issued the orders for the grenades and the pistols to go up on to the bridge? A. The Commanding Officer.
- Q Do you see him in Court to-day? A. Yes.
- Q Which is he? A. The first on the left-hand side. (Indicating accused Eck).
- Q What happened after the pistols and the hand grenades were brought up to the bridge? A. After I heard shooting.
- Q Did you see who was shooting? A. No, I did not see it.
- Q Did you hear anything else -- any other explosions? A. No, I do not know.
- Q Who was on the bridge at the time when the machine guns were taken up?
A. I could not tell you exactly. I stated that in my Affidavit, and I cannot remember now any more.
- Q At what time did this happen? A. About 2200 hours.
- Q Did you later go down from the bridge? A. Yes; I went up and down various times.
- Q Were you on duty at mid-night? A. Yes.
- Q Was there any noise at that time; was there any firing? A. Yes.
- Q How long did that go on for? A. Till about 2300 hours; I could not tell you exactly.
- Q I am talking about later, at mid-night when you went up on the bridge. Was there any firing then? A. Yes, there was still firing then.
- Q For how long? A. By mid-night it was nearly finished.
- Q Were any other orders issued by the Captain? A. The Commanding Officer issued orders to gas the rafts.
- Q Could rafts be seen at that time? A. I saw some rafts in my sector.
- Q Did you see anybody on the rafts? A. I did not see anybody on the rafts.

Cross-examined by Dr. Tolsen.

- Q What sort of pistols had been brought up to the bridge? A. Machine guns and Mauser pistols were brought up.
- Q Did you notice that shots had been fired during the whole of the time from the Mauser pistols? A. No, I did not notice it.
- Q Did you notice whether there was any firing from machine pistols? A. Yes, I did hear that.
- Q Did you hear that one of the rafts was hailed to approach the submarine?

after the members of the crew of the sunk ship had been interrogated on the UBoat? There were two members of the crew on the U Boat who were interrogated and they were able to get away and get back on the rafts. Now I am asking: When this was done did you hear if a raft had been hailed to come nearer? A. I did not notice that, because I went down to check up on the name.

Q Did you hear at any time that a member of the crew of the German submarine called out: "Kill them all"? A. No, that was never called out.

Q When did the submarine leave the area of operations? A. At about 1 o'clock on the 14th March.

Q At what time does dawn break in this region? A. At about 6.

Cross-examined by Dr. Pabat.

Q Was any direct order issued to shoot, or only an order issued to bring arms up to the bridge? A. I only know about an order to bring up arms to the bridge.

THE JUDGE ADVOCATE: Did you personally hear the Commanding Officer give the order to take the weapons up to the bridge? A. I could not tell you exactly.

THE JUDGE ADVOCATE: He said: "I can no longer recollect".

THE WITNESS: I no longer recollect. I could not tell you exactly now.

THE JUDGE ADVOCATE: How long after the sinking of the "Peleus" did you see the weapons brought up? A. It must have been immediately after the sinking of the "Peleus".

THE JUDGE ADVOCATE: Do one or other of you want to say anything?

Further cross-examined by Dr. Todsen.

Q Can you tell me whether the machine pistols and the Mauser pistols had been brought up to the bridge before the two members of the crew of the "Peleus" had been interrogated? A. It is too long ago. I cannot tell you exactly now.

Q Did you notice that after the interrogation of the Greek members of the crew machine guns were brought up? A. I could not tell you exactly.

THE JUDGE ADVOCATE: After the sinking did the submarine cruise about among the wreckage? A. Yes.

Q Did that happen while you were on the bridge? A. Yes.

Q While you were standing on the bridge did you hear the Commander give an order? A. He gave an order to change the course.

Q What did the U Boat then do; did it go away? A. Then we went back to the course of the "Peleus".

Q Was any order given about the floating wreckage? A. That the wreckage should be rammed.

Q It should be rammed. Who gave that order? A. The Commanding Officer.

Q Did you hear it? A. Yes.

Q Was it after and in consequence of that order that the submarine was cruising about? A. During the cruising about the order was given.

THE JUDGE ADVOCATE: Do any of you want to ask anything on that?

DR. TODSEN: No, I think not.

(The witness withdraws).

Able Seaman WILHELM SCHMIDTZ is called in and, having been duly sworn, is examined by Colonel Halse, through the interpreter, as follows:-

- Q Are you Wilhelm Schmidt? A. Yes.
- Q Were you in March, 1944, an Able Seaman in the U Boat 852? A. Yes.
- Q Were you in charge of the arms on board? A. Yes.
- Q Do you remember the sinking of the "Palau"? A. Yes.
- Q Did you receive any orders with regard to arms? A. As I was downstairs I received the order to get small arms ready.
- Q What sort of small arms? A. Pistols, machine pistols and hand grenades.
- Q Who gave these orders? A. I was in the rear part of the boat and got the message through to prepare the arms.
- Q From whom did the message come? A. I was not told that, but I presumed it came from the officers' room.
- Q Did you go up on deck about mid-night? A. I was on deck about between 12 and 1 o'clock; I do not know the exact time.
- Q What did you have to do there? A. One M.G. 15 was not quite in order and had to be checked.
- Q Had it been fired? A. Yes, the M.G. had been fired.
- Q On the next morning did you check up ammunition? A. No, the ammunition was not checked up. There was some surplus ammunition and we did not check up on it.
- Q Do you know whether any hand grenades were used that night? A. I sent up five hand grenades and I got back two, but I do not know whether they had been thrown.

Cross-examined by Dr. Todsen.

- Q Can you remember if the machine pistols and Mauser pistols were handed up to the bridge first? A. I cannot say for sure. I handed the machine guns through to the control room and also the other arms.
- Q Can you not say even if the machine guns were handed on board later on? A. I cannot say myself, because I did not hand the things up myself.
- Q But were not you asked first for the Mauser pistols and the machine pistols, and only afterwards for the machine guns? A. The M.G. 15 was handed up by somebody else; I did not get the order myself.
- Q Could not you ascertain whether any machine pistol ammunition and pistol ammunition had been used? A. The machine pistols and the other pistols had not been used.

DR. TODSEN: That is what I wanted to know.

Cross-examined by Major Lornon.

- Q With regard to the gun that was defective on the port side, was that a machine gun or a machine pistol? A. It was a M.G. 15.

DR. PABST: I have no questions.

DR. TODSEN: Could I ask another question?

THE JUDGE ADVOCATE: Yes.

Further cross-examined by Dr. Todsen.

Q Do you know if, apart from the machine gun ammunition, also two centimetre ammunition was used? A. I cannot say for certain, because the previous day I did not handle the two centimetre ammunition. I did see some empty cartridges, but they might have been used for practising the day before.

(The witness withdraws).

Sickberth Attendant WEINER HAMESISTER is called in and, having been duly sworn, is examined by Colonel Halse, through the interpreter, as follows:-

Q Are you Weiner Hamesister? A. Yes.

Q Were you a Sickberth Attendant on the U Boat 852 in March, 1944? A. Yes.

Q Do you remember the sinking of the "Peleus"? A. Yes.

Q After the sinking did the U Boat go close to the wreckage? A. Yes.

Q Endeavouring to get information as to the name of the ship, and so on? A. Yes.

Q Did some of the members of the crew come aboard the submarine? A. Yes.

Q Were they interrogated by some officers? A. Yes, by two officers.

Q Who were the officers? A. Kapitenleutnant Lenz and Leutnant Hoffman.

Q Do you recognise those two officers here to-day? A. Yes.

Q Which are they? A. I can see Kapitenleutnant Lenz and Leutnant Hoffman.

Q Which are they in the box? A. The second and the fourth officers.
(Indicating accused Lenz and Hoffman).

Q Did you make a report to the Captain? A. Yes. The Commander told me to find out from these two officers which course the ship took.

Q Did you find that out? A. Yes.

Q Did you report that to the Commanding Officer? A. Yes, I reported it to the Commandant.

Q What happened after that report had been given? A. (After a pause) Weapons were brought up to the bridge.

Q What sort of weapons? A. Machine guns 15.

Q Anything else? A. Later on I believe hand grenades were brought up.

Q Who gave the orders for the machine guns to come up? A. I do not know.

Q Who was on the deck or the bridge at the time the machine guns were brought up? A. I cannot say for sure. The watch on the bridge, the Commander. I do not know who else was on the bridge.

Q Is the Commander here to-day? A. Yes.

Q Which is he? A. The first officer. (Indicating accused Eck).

- Q What happened to the machine guns when they were brought up on to the bridge?
A. They were brought up and they were fired, but it was too dark to observe anything closely.
- Q Who fired them? A. I could not observe it for the whole time; I only saw the medical officer and the engineer.
- Q Who were they? What are their names? A. Kapitenleutnant Lenz and Marine Stabsarzt Weisspfennig.
- Q Is Weisspfennig here to-day? A. Yes.
- Q Which one is he? A. The third officer. (Indicating accused Weisspfennig).
- Q Did you hear any hand grenade explosions? A. Yes.
- Q Do you know who threw the hand grenade? A. The second officer of the watch told me later on that he had burned his hand.
- Q Who was the second officer of the watch? A. Lieutenant Hoffman.
- Q Did you give him any first aid for that? A. Yes, I treated his wounds.
- THE JUDGE ADVOCATE: Did he tell you what he had been doing? A. Yes; he told me he threw hand grenades.

Cross-examined by Dr. Tolsen.

- Q When the U Boat fired the two torpedoes at the "Pelorus" was she in a submerged or surfaced position? A. A surfaced position.
- Q After the Greeks had been interrogated on the U Boat and left it again did you hear that members of the U Boat's crew hailed a raft and gave it an order to come nearer? A. No.
- Q You were on deck? A. On the bridge, not on deck.
- Q You should have heard it then? A. Not absolutely.
- Q Did you hear that one member of the U Boat's crew shouted in English: "Kill them all"? A. No, I did not hear it.
- Q Did you hear the exact order given by the Commandant? A. I do not know which order is meant.
- Q Did you hear the U Boat Commander give the order to destroy wreckage? A. No, I did not hear it.
- Q Did you hear at any time the U Boat Commander give the order to shoot at survivors? A. No, I did not hear that.
- Q Did you hear any order in that respect? A. No, I did not hear any order given in that respect.
- Q Did you see what was being shot at? A. No, I did not see it.
- Q Did you see any wreckage floating in the water? A. No, it was too dark; I could not recognise it.
- Q Could you see the water? A. Yes, I could see the water.
- Q And you saw no wreckage? A. I saw the rafts when they were lighted up with their position lights, but the position lights were put out later on.
- Q Did you see at any time that shots were directed at human beings? A. No.

Q Did you hear an order given by the Commandant to open fire? A. No.

Q The Commandant stood next to you on the bridge? A. I stood at the tower hatch and was runner.

DR. TODSEN: That is a man who is standing at his post and has to give further every order that is shouted out by the Commander, mostly by telephone. (To the witness) If you stood at the hatch could you see the water from there? A. No, I could not see it from there.

Cross-examined by Major Lornon.

Q Was the signalling lamp used on the U Boat? A. (After a pause) Yes.

Q Would you not see anything in the water in the light of the signalling lamp? A. I did not service the signal lamp.

Q I will repeat that question. Did you see anything in the water by the light of the signalling lamp? A. I only saw, shortly after the sinking, floating rafts, their position lights.

Q Were they rafts illuminated by the signalling lamp? A. I could not say that.

Q Did you see any large pieces of wreckage floating about in the water? A. I could not say now, because it happened too long ago.

Q Did you notice the U Boat ramming any pieces of wreckage? A. No.

Q Were you told by the Commanding Officer to tell the Kapitänleutnant Lens and Lieutenant Hoffman to hurry up with the interrogation of the members of the crew of the S.S. "Pelous"? A. Yes, the Commandant gave the order to hurry up with the interrogation.

Cross-examined by Dr. Pabst.

Q Were you in the conning tower or on deck when Weisspfeunig fired on the raft? A. On the bridge.

Q And from there you could observe that he actually fired or worked the machine gun? A. Yes.

Q You mentioned earlier that you stood at the tower - that was your action station - and now you say you were on the bridge. A. I had to change my position, because I stood on the hatch on a ladder which took some time. It was most difficult; I had to change position.

(The witness withdraws).

Mr J.C. MOSSOP is called in and, having been duly sworn, is examined by Colonel Halse as follows:-

Q May I have your full name? A. My name is John Coubro Mossop.

Q I think you are a solicitor of the Supreme Court? A. Yes.

Q And a temporary civil servant serving at the Admiralty? A. Yes.

Q On the 3rd June, 1944, did you go to the London District Prisoner of War Cages? A. I did.

Q Was that in connection with the sinking of the S.S. "Pelous"? A. Yes.

Q I think actually the accused Lens was being interrogated? A. Yes.

Q Was there an intelligence officer from the Admiralty present? A. There was.

Q Is that his name on there? (Slip of paper handed) A. Yes, that is his name. (Slip of paper handed to the Court).

Q In fact Lens speaks English? A. Yes.

Q Did you take a statement from him? A. I did.

Q Before taking the statement did you tell him it was an entirely voluntary statement? A. I did.

THE JUDGE ADVOCATE: How did you put it to him? What did you say? A. The position was this, that I was told before I went there that he was anxious to make a statement. I went into the room where Lens was, and when we finished the statement I inserted a sentence to the effect that the statement was made of his own free will.

COL: RAISE: Is this the statement? (Handed) A. This is the statement.

(Statement by accused Lens marked Exhibit "C", signed by the President, and attached to the proceedings).

THE JUDGE ADVOCATE: Will you read it? A. "In the matter of the sinking of the S.S. Pelous and in the matter of the deaths of members of her crew. I, Kapitänleutnant (Ing) Hans Richard Lens, of Berlin, Germany, do hereby make oath and say as follows:

"1. I joined the German Navy in 1936 at Stralsund, following which I did a course at the German Naval College at Flensburg. I then made a cruise abroad in the training vessel Scheeswig-Holstein. In 1937 I went on a midshipman's course at Flensburg and in 1938 I served as a midshipman in the battleship Deutschland, after which I proceeded to the Naval College at Kiel. I was commissioned lieutenant (Ing) in October, 1938. In 1939 I was first appointed to a transport organization at Wilhelmshaven and in December 1939 I joined the German U-boat arm. In 1940 I was appointed to the U-Boats Lehr Division at Neustadt and then to a transit barracks at Flom. In October 1940 I was given command of a platoon at the U-Boats Lehr Division at Pillau and later served as Engineer Officer in U-11 under Oberleutnant zur See Petersen. In the spring of 1941 I commanded U-453 under Oberleutnant zur See Schlittenbach in which I remained until October 1942, when I was appointed to be an instructor at the U-Boats Lehr Division at Gdynia. I remained in the latter appointment until spring 1943, when I was appointed to stand by the building of U-852, commanded by Kapitänleutnant Heinz Eck.

"2. The officers of U-852 were as follows: Captain: Kapitänleutnant Heinz Eck. 1st Lieutenant: Oberleutnant zur See Colditz. 2nd Lieutenant: Lieutenant zur See Hoffman. 3rd Lieutenant: Oberfachrich zur See Schwan. Engineer Officer: Kapitänleutnant (Ing) Hans Richard Lens. Assistant Engineer Officer: Oberleutnant (Ing) Woldemar Banft. Medical Officer: Marinestabsarzt Dr. Walter Weispennig.

"3. U-852 sailed from Kiel on her first patrol on 18th January, 1944. She called at Kristiansand, Norway, about two days later and proceeded into the North Atlantic by passing between Iceland and the Faroes. She then set course for the South Atlantic.

"4. At dusk on 13th March, 1944, while U-852 was surfaced, I was below decks. I then became known in the boat that we had sighted an enemy merchantman. I remained below decks. After a short while, we fired two torpedoes, both of which I afterwards heard had hit. U-852 closed one boat containing three survivors, which I understood were from the merchantman which we had just sunk. As I spoke some English the captain ordered me to interrogate these survivors, which I proceeded to do, after ordering one of the survivors on to U-852's upper-deck. I asked him the name of his ship, his captain's name, the nationality of the ship and of the survivors, cargo, port of sailing and destination and whether there were other vessels in the vicinity. He answered all these questions and stated that his ship was the Pelous, a Greek vessel. He then left U-852 and entered his boat. I

"returned to the conning-tower and reported to my captain what this survivor had told me. I then heard that the captain had decided to eliminate all trace of this sinking. I assumed from this that it was intended to kill the survivors: I thereupon approached my captain and informed him that I was not in agreement with this order. He replied that he was nevertheless determined to eliminate all trace of the sinking. I then went below to note the survivors' statements in writing and after a few minutes I heard the sound of gunfire from above. The boat circled in this area for some time, with several bursts of fire audible and with the noise of a minor collision also heard. Hand grenades were passed up to the bridge, and I heard them exploding in the vicinity. Some while later I went on the bridge myself and saw small wreckage in the water. It was then quite dark. I noticed Matrosen Obergefreiter Schwender with a machine gun in his hand, pointing it at pieces of wreckage. A shape resembling a human form was then stated to have been sighted from the bridge, clinging to a piece of wreckage. I myself observed no detail. Matrosen Obergefreiter Schwender was about to fire his machine gun at this target when I took it from his hand and fired it myself in the general direction of the target indicated. I did this because I considered that Schwender, long known to me as one of the most unsatisfactory ratings in our boat, was unworthy to carry out such an order. ('Dass so ein Mann, der ausgerechnet schlecht war, so ein Befehl ausfuehren soll'). I was not in agreement with this order, but, since it was an order, I realized that it had to be carried out. I fired two or three bursts, with no results observed owing to darkness. No more firing took place and the boat continued on her voyage southwards.

"5. I was a member of the ship's company of U-852, when she was scuttled on 3rd May, 1944, and was brought as a prisoner of war to England.

"6. I make this sworn statement voluntarily and of my own free will.

"Sworn at 607 Kensington Palace Gardens, London, W. this 3rd June, 1944. Before me J.C. Measop, Commissioner for Oaths. (Signed) Lenz".

(The statement Exhibit "G" is then read in German).

COL. HALSE: I think three days later you saw Eck, the first accused? A. I did.

Q Did you show him a copy of Lenz's affidavit? A. Yes.

Q Did you also tell him that other members of the crew had made statements? A. Yes.

Q What was Eck's reaction to that? A. Eck asked permission to see Lenz to ascertain whether he had in fact signed the statement, and whether he had in fact signed it voluntarily. The interrogating officer gave permission for Eck to see Lenz.

Q Do you speak German? A. No.

Q Did Eck understand English? A. Eck was able to read English with explanation, but he was not able to speak it fluently.

Q This interview, then, took place to a large extent through an interpreter? A. Yes.

Q After Eck had seen Lenz did he indicate whether or not he wished to make a statement? A. After Eck had seen Lenz he asked for time to consider whether he should make a statement. He was granted one hour.

Q Did he then say he did not wish to make a statement about the shooting? A. Eck was unwilling to make a statement about the shooting.

Q Were certain questions asked about superior orders? A. Yes. Eck was asked whether he cared to make a statement about the question of superior orders.

Q What did he say to that? A. Eck said that he wished to make a statement about the question of superior orders. A statement was prepared at his dictation after he had first been cautioned.

Q What were the words used? A. Eck was warned that if he liked to make a statement the statement would be taken down in writing and might be used in evidence against him or for him at his trial. The statement was then typed out. It was read over and explained to Eck, and he inserted a clause to the effect that it was done voluntarily.

Q Was anything said when that statement was being prepared as to admitting or denying anything in Lenz's statement? A. Lenz's statement had been shown to him and he was asked whether he wished to deny anything in it. Eck said that he did not wish to deny anything in it. He was then asked whether he wished to comment on it, and he stated that he did not. He was then sworn to the statement.

Q Will you look at the statement? (Handed) Is that the statement which Eck made? A. This is the statement which Eck made.

(Statement by accused Eck marked Exhibit "H", signed by the President, and attached to the proceedings).

Q Will you read it? A. "In the matter of the sinking of the S.S. Peleus and in the matter of the deaths of members of her crew. I, Kapitänleutnant Heina Eck, of Berlin, Germany, do hereby make oath and say as follows:-

"1. I joined the German Navy in 1934 and was commissioned Leutnant zur See on 1st April, 1937. I was promoted Oberleutnant zur See on 1st April, 1939, and Kapitänleutnant on 1st December, 1941.

"2. In March, 1944, I was serving as Commanding Officer of U-852.

"3. Neither before sailing nor on passage did I at any time receive orders to shoot or otherwise to eliminate survivors from any vessel that my boat might sink.

"4. I make this sworn ~~with~~ statement voluntarily and of my own free will and clearly understanding that it may be used in proceedings taken against me".

That is sworn at No. 3 Interrogation Centre on the 6th June, 1944. It is signed "Heina Eck", before me, "J.C. Mossop, Commissioner for Oaths".

(Statement Exhibit "H" is then read in German).

Q I think you interviewed the accused Weisepfennig also? A. I did.

Q Was that in the presence of an Interrogating Officer? A. Yes.

Q Did you tell him that Eck and Lenz had made statements? A. I did.

Q Did you caution him? A. I did.

Q What was his reaction? A. He refused to make any statement.

Q Did he see the Affidavits made by Eck and Lenz? A. Yes; he saw the

statements prepared by Eck and Lenz, and also two further statements

prepared by Cairniah and Schenk.

Cross-examined by DR. TODSEN:

- Q. When you took the statement from Eck, you asked Eck if he wished to contradict anything in Lens's affidavit? A. I did.
- Q. After that you asked if he agreed with the statement of Lens? A. Yes.
- Q. Then he answered: "I have to say nothing more to it"? A. I think the words he used were: "I do not wish to comment on it".
- Q. Were you under the impression that he meant to deny anything that Lens had said, or do you think that he meant to say: "I do not want to tell you anything about what Lens said"? A. It was the second interpretation.
- Q. So that you cannot take the statement of Lens only saying that Eck agreed with Lens on this point, you see.

THE JUDGE ADVOCATE: I think it is more satisfactory if you continue to put your questions in German. It removes the possibility of misunderstanding. Cross-examination is a very difficult art and in a foreign language it is still more difficult.

DR. TODSEN: Yes. (To the witness): It was clear to you, after the statement, that it could not be assumed that Eck was in agreement with Lens? A. He refused to comment on it; he did not deny it and he did not agree with it.

Cross-examined by MAJOR LERMON:

- Q. Was the statement made by Lens an English one or a German one? A. Do you mean the written statement or his verbal statement that preceded the written one?
- Q. Both. Was the verbal statement in German or in English? A. The interrogation proceeded partly in both languages.
- Q. I suggest to you that Lens's English is not as good as you have made it out to be in court today?

THE JUDGE ADVOCATE: The phrase "I suggest to you" is almost incapable of translation in the sense in which you are now using it.

MAJOR LERMON: I will alter it. (To the witness): Do you remember this sentence in Lens's statement: "I assumed from this that it was intended to kill the survivors"? A. Yes.

- Q. You remember that that was after he had heard that the Commander had decided to eliminate all traces of the sinking? A. Yes.
- Q. Is it not a fact that what Lens said was this, or something to this effect: "I assumed from this that the survivors would die"? A. No.
- Q. You do not agree with that? A. No, not in the sense that they would die of natural causes, if that is what you mean.
- Q. I am sorry, no. I mean in the sense that they would die if their rafts were shot away from them? A. I am afraid that that is a distinction which had not occurred to me. I certainly understood Lens to mean that the shooting was going to be at the people.
- Q. That is what you understood? A. Yes.
- Q. The following two sentences would seem to suggest that my interpretation is the right one. It reads: "I assumed from this that it was intended to kill the survivors. I thereupon approached my captain and informed him that I was not in agreement with this order. He replied that he

was nevertheless determined to eliminate all traces of the sinking". Do you not agree that, reading those further sentences, it makes it more likely that the interpretation that I have put on Lenz's words is more correct than the one you did? A. I did not understand Lenz's statement in your sense and I do not think that he meant it in that sense either.

DR. PARST: No questions.

COL. HALSE: There are one or two points that Mr. Messop may be able to assist about. They are not arising out of my examination at all.

THE JUDGE ADVOCATE: If you want to ask something that you omitted in chief, you can do so.

MAJOR LEMON: I understood after lunch from the learned prosecutor that Mr. Messop, as a result of long experience at the Admiralty, has considerable knowledge of the state of U-boat warfare and U-boat losses which occurred about the time of the sinking of the SS Polara, and we should have liked very much to cross-examine Mr. Messop on those points; but unfortunately we are not in a position at the moment to do so, and we would like to ask the court if Mr. Messop may be recalled at a later stage in the proceedings.

THE JUDGE ADVOCATE: First of all, are you making this application on behalf of all the defending counsel?

MAJOR LEMON: Yes.

THE JUDGE ADVOCATE: Is the application that Mr. Messop may, if you wish it, be recalled at a later stage?

MAJOR LEMON: That is so.

THE JUDGE ADVOCATE: Even during the progress of the defence case?

MAJOR LEMON: Yes.

THE JUDGE ADVOCATE: I am not quite satisfied that I understand why you want him at the moment. Are you expecting some information that you have not yet got?

MAJOR LEMON: That is so. We are expecting some witnesses who we understand may be coming some time in the near future, and it will depend very much on what these witnesses say as to the form that the cross-examination of Mr. Messop will take.

THE JUDGE ADVOCATE: Sir, you will no doubt allow Mr. Messop to be recalled later on, if necessary.

THE PRESIDENT: Yes.

Re-examined by COL. HALSE:

Q. Was the statement read over to Lenz before he signed it? A. Lenz's statement was gone through in detail with him and one or two points which he did not understand were translated into German for him; thus, he did not understand what "commissioned" meant, and so it was explained in German.

THE JUDGE ADVOCATE: You mean in the sense of commissioning a ship? A. Yes. We took particular care to see that he understood everything that he had written and, when it came to the question of explaining his motives for taking the gun away from Schneider, we put the actual words in German after the English translation, because we were very much afraid that any English translation would not do justice to his motives.

(The witness withdraws)

COL. HALSE: I propose to read the affidavit of an officer in the Naval Intelligence. The second affidavit I do not propose to read, the one to which I have referred. This is the first affidavit.

THE JUDGE ADVOCATE: When was it sworn?

COL. HALSE: It was sworn on the 17th August. The deponent is a captain in the Royal Marines. He has served as an officer on the Naval Staff of the British Admiralty and is familiar with the German language, having lived in Germany for four years before the outbreak of war.

DR. TODSEN: I think the learned prosecutor is now going to read the statement of Mr. Weatherby.

THE JUDGE ADVOCATE: Yes, he is.

DR. TODSEN: In that statement there is another statement of Eck which appears in paragraph 4.

THE JUDGE ADVOCATE: Yes.

DR. TODSEN: That is the statement to which I objected this morning for the following reasons. The first reason is that Eck was not cautioned in due form, as I am told he should have been cautioned in due form under the laws of these proceedings.

THE JUDGE ADVOCATE: If your objection is based solely on the fact that there was no caution, it is desirable that you should know this. It is quite true that the statement has got to be a voluntary statement, but the practice of administering a caution is no more than a device which is designed to ensure that it is a voluntary statement. The mere absence of a caution does not mean that it is an involuntary statement at all. It is merely a desirable step to take before you accept any statement from an accused person.

DR. TODSEN: I am aware of that, but there are other points. The second reason is that I was told that this statement would not be used against him. The third reason is that this statement does not bring up the exact words which Eck had used; it only reproduces what the interrogating officer was thinking as to what Eck had said. It is only a report and not a true statement, not an exact statement. On those grounds, I do not think there could be any evidence before this court upon that.

THE JUDGE ADVOCATE: Very well. Col. Halse, do not let us for the moment discuss whether or not this is a voluntary statement, but just look at the substance of the statement. Do you consider it is really necessary for the purposes of this case?

COL. HALSE: I had looked at that and, in view of the second objection raised by counsel, I do not propose to put it in. I certainly should not press it in view of that observation.

THE JUDGE ADVOCATE: That being so, the question does not arise, and that statement will not be received by the court.

DR. TODSEN: Thank you.

COL. HALSE: There are two affidavits. One affidavit I propose to put in. The first affidavit is that of Liassia, which I started reading this morning, and, as far as the defence was concerned, was found to be missing, but they have it now.

The affidavit reads as follows: "I, Antonio Liassia, late Chief Officer of the Greek Ship 'Pelagos', hereby declare after my ship was torpedoed on 13th March 1944 I was thrown into the sea by the explosion which knocked me unconscious, and I came to in the sea. I clutched

...of a water cover to save myself. The 'U' boat was surfaced and the crew shouted 'What is the name of the ship?'. Later I transferred to a raft with two others, and we joined another raft with more survivors. The 'U' Boat approached and took the 2nd Officer aboard for interrogation. After a short time the 2nd Officer was allowed to return to a raft. The 'U' Boat then circled the rafts and wreckage, shouting out 'Kill' and started machine gunning those on the rafts and clinging to wreckage in the water. Hand grenades were also thrown by someone in the 'U' Boat. Four persons were killed by machine gun bullets. They were on a raft, and many more were killed in the water. At this time I was wounded in the back by a hand grenade which burst on the raft. The 'U' Boat remained all night hunting out survivors who may have been still alive, using a search light, but I and three others shamed dead. The 'U' Boat machine gunned the rafts and wreckage all night, firing many bursts. The 'U' Boat left about dawn. I have wounds in my back and X-ray photographs show shrapnel splinters from the grenade. That is signed by the deponent and sworn before a lieutenant-commander in the South African Naval Forces on the 7th June 1944.

(Affidavit of Antonio Lioassis, having been interpreted into German, is marked Exhibit "I", signed by the President and attached to the proceedings).

COL. HALSE: That is the case for the prosecution.

THE JUDGE ADVOCATE: That is the case, subject to Mr. Messop being recalled if he is wanted by the defence. He will be recalled, in that event, as a prosecution witness?

COL. HALSE: Yes, of course.

THE JUDGE ADVOCATE: That is the close of the prosecution's case against you. This is the time for each one of you to make your defence to this charge, and I am about to explain to you what your rights at this point are. Each one of you may for himself choose one of three courses. He can give evidence on oath. If he does that he is liable to be cross-examined. The second course that is open to each of you is to make a statement without taking the oath. If he chooses to make a statement without taking the oath, no one, not even his own defending counsel, is allowed to ask him any questions. The third course that is open to each of you personally is to say nothing. It is important that you understand that the court is more likely to attach weight to evidence given on oath than it is to a mere unsworn statement. In addition to choosing one of these three courses for himself, each one of you can, if he so wishes, call witnesses, those witnesses being either as to the facts of the case or as to character or as to both. For the purpose of finding out what each of you intends to do I shall now ask you some questions and, if before you answer any question you want the help of your counsel, you can at once ask for it.

Kapitanleutnant Heinz Bok, do you apply to give evidence as a witness?

THE ACCUSED BOK: Yes.

THE JUDGE ADVOCATE: Do you intend to call any other witness in your defence?

THE ACCUSED BOK: Yes.

THE JUDGE ADVOCATE: Is he a witness as to character only?

THE ACCUSED BOK: No.

THE JUDGE ADVOCATE: Lieutenant zur See August Hoffmann, do you apply to give evidence as a witness?

THE ACCUSED HOFFMANN: Yes.

THE JUDGE ADVOCATE: Do you intend to call any other witness in your defence?

THE ACCUSED HOFFMANN: Yes.

THE JUDGE ADVOCATE: Is he a witness as to character only ?

THE ACCUSED HOFFMANN: No.

THE JUDGE ADVOCATE: Marine Stabsarzt Walter Weisspfeunig, do you apply to give evidence as a witness ?

THE ACCUSED WEISSPFEUNIG: Yes.

THE JUDGE ADVOCATE: Do you intend to call any other witness in your defence?

THE ACCUSED WEISSPFEUNIG: Yes.

THE JUDGE ADVOCATE: Is he a witness as to character only ?

THE ACCUSED WEISSPFEUNIG: No.

THE JUDGE ADVOCATE: Kapitänleutnant (Ing) Hans Richard Lenz, do you apply to give evidence as a witness?

THE ACCUSED LENZ: Yes.

THE JUDGE ADVOCATE: Do you intend to call any other witness in your defence ?

THE ACCUSED LENZ: Yes.

THE JUDGE ADVOCATE: Is he a witness as to character only ?

THE ACCUSED LENZ: Yes.

THE JUDGE ADVOCATE: Is that right ?

MAJOR LEBMON: That is quite right.

THE JUDGE ADVOCATE: Gefreiter Schwender, do you apply to give evidence as a witness ?

THE ACCUSED SCHWENDER: Yes.

THE JUDGE ADVOCATE: Do you intend to call any other witness in your defence?

THE ACCUSED SCHWENDER: Yes.

THE JUDGE ADVOCATE: Is he a witness as to character only ?

THE ACCUSED SCHWENDER: No.

THE JUDGE ADVOCATE: The effect of that is that each of the defending officers is entitled to open the defence, and the prosecution reserve the last word against all of them.

MAJOR LEBMON: I think it is time for me to say, on behalf of all the accused, that we are not in fact ready to open the defence. You have heard my submission this morning with regard to our request for an adjournment on the grounds that our witnesses have not arrived, and on what those witnesses are going to say naturally depends our opening addresses and also the questions that we put to the accused, and also the questions we put to Mr. Mossop. Therefore, for the reason that I gave you this morning, the reason that the defence unfortunately is not prepared at this stage to open the defence, I ask this court for an adjournment.

THE JUDGE ADVOCATE: I think it might help the court if you told the court what is the nature of the evidence that you hope to get from these witnesses.

MAJOR LEMON: Certainly. The nature of the evidence that we hope to get from one of our witnesses, Admiral Goët, is the extent of U-boat losses at this stage of the war, the extreme dangers that U-boat commanders ran on the particular route that the U 852 was engaged upon at that time, and the importance of the rendezvous that the U 852 had at this time in the Indian Ocean; in substance, it will be a defence of operational necessity. Without those witnesses and without the time to look up relevant authority on the subject, the defence feels it cannot put its case properly and thus do justice, not only to the accused, but to the court.

THE JUDGE ADVOCATE: How soon can these witnesses be here, Col. Halse?

COL. HALSE: I understand that one of them is in all probability on his way to the United States.

MAJOR LEMON: That is not the man we desperately need.

THE JUDGE ADVOCATE: Major Lemon, do you know the names of the witnesses you want?

MAJOR LEMON: Certainly: Admiral Goët and Admiral-Judge Bokhart.

DR. PABST: I want to call Col. Morton.

COL. HALSE: I understand that that witness is formal, as to character.

THE JUDGE ADVOCATE: Who is on the way to the United States?

COL. HALSE: Admiral Goët is on the way to the United States. Admiral-Judge Bokhart, I am told, is in the American Zone and we have already telephoned to Weisbaden with a view to getting him here tomorrow.

THE JUDGE ADVOCATE: It is quite clear that Admiral Goët is not obtainable.

MAJOR LEMON: That is quite clear. I think we can make arrangements for somebody else who is available in Hamburg now to give evidence.

THE JUDGE ADVOCATE: Then the real practical difficulty is as to how soon Admiral-Judge Bokhart can get here.

MAJOR LEMON: It is not essential to have Admiral-Judge Bokhart.

THE JUDGE ADVOCATE: You have got a witness in Hamburg?

MAJOR LEMON: Yes, Captain Schnee.

THE JUDGE ADVOCATE: Can he be got here tomorrow?

COL. HALSE: Yes.

THE JUDGE ADVOCATE: Can Col. Morton be got here tomorrow?

DR. PABST: He is near London. He is the Commander of a Prisoner of War Camp, and he knows Weisapfennig very well.

THE JUDGE ADVOCATE: Have you taken any steps to get him here?

DR. PABST: I have given his name to Major France, and I hoped Major France from 8 Base Sub-Area would produce this evidence.

THE JUDGE ADVOCATE: Do you know anything about that, Col. Halse?

COL. HALSE: I am instructed that his name has been handed to 8 Base Sub-Area. The War Office has been contacted and they have sent along information that they cannot get hold of him; they do not know him.

THE JUDGE ADVOCATE: That is very unsatisfactory. If in fact he was the Commandant of a Prisoner of War Camp, where this officer was confined, they must know him.

COL. HALSE: They may not be able to contact him now. He might have been demobilised and disappeared from the records. The first time I heard about it was after lunch. However, I am prepared to accept any statement as to character. I do not wish there to be any difficulty about that. I shall not question that these officers are all of good character.

THE JUDGE ADVOCATE: With regard to Captain Schnee, he can be got here tomorrow?

DR. TODSEN: Yes.

THE JUDGE ADVOCATE: So that there is no necessity for an adjournment so far as he is concerned?

DR. TODSEN: No.

THE JUDGE ADVOCATE: Dr. Pabst, you have heard what has been said about Col. Morton?

DR. PABST: Yes.

THE JUDGE ADVOCATE: And you have also heard Col. Halse say that he is prepared to accept any statement put forward as to Weispfennig's character: you follow that, do you not?

DR. PABST: Yes.

THE JUDGE ADVOCATE: I suppose this officer did not know him except as a Commandant of a Prisoner of War Camp, did he?

DR. PABST: Yes. He knows him very well, because he was always together with him and he had many talks with him. He travelled as a medical person in this camp; he was always together with him.

THE JUDGE ADVOCATE: Do you mean that he was a doctor in the camp?

DR. PABST: No; he was the leader of this camp; he was the Commander of the camp.

THE JUDGE ADVOCATE: If in fact the prosecution are willing to accept that Weispfennig is of good character, would it help you to call Col. Morton, if you can?

DR. PABST: I will ask my client before I answer that.

THE JUDGE ADVOCATE: You follow what I am putting to you, that the prosecution are accepting that Dr. Weispfennig is of perfectly good character, outside this alleged offence.

DR. PABST: Yes, I follow that.

THE JUDGE ADVOCATE: I am putting it to you, that being so, will it help you to call Col. Morton, even if he is available.

DR. PABST: I understand you, but I will ask my client before I answer the question.

THE JUDGE ADVOCATE: Certainly.

(The Accused Weispfennig and Dr. Pabst confer).

DR. PABST: My client does not need Col. Morton.

THE JUDGE ADVOCATE: That being so, we are left with Captain Schnee and the

question of any time that you might need to consider his evidence.

MAJOR LEMMON: That is so, but not merely his evidence.

THE JUDGE ADVOCATE: What length of time do you suggest is desirable? Perhaps you would like to discuss that with your colleagues and then tell the court.

MAJOR LEMMON: Yes.

(Defending Counsel confer)

MAJOR LEMMON: May it please the court. It is the consideration of the defending counsel that three days is the absolute minimum which would be required to look up the necessary law and cases on this subject, to interview the witnesses, and to be in a position to put the defence case forward before this court.

THE JUDGE ADVOCATE: You are asking us to adjourn this case for three days, are you?

MAJOR LEMMON: That is what it amounts to.

THE JUDGE ADVOCATE: What do you say, Col. Halse?

COL. HALSE: With the greatest respect, I should have thought that if Mr. Messop gave every assistance with regard to the information that he has in his possession and the Captain who is now in Hamburg is made available, they could quite easily get every information and data they want by tomorrow morning. There are certain books available and I am prepared to loan the defence those books.

THE JUDGE ADVOCATE: What are the books you want, Major Lemmon?

MAJOR LEMMON: Dr. Pabst has in fact a list of the books. Prof. Wegner, who is here, has a list of the books, and he has the books himself. There will be no difficulty, I think, in seeing the books.

THE JUDGE ADVOCATE: The books are available here?

MAJOR LEMMON: Absolutely, but I think the Court will appreciate that this case does involve questions of fundamental importance in international law and it is vital for the administration of justice generally that the court should get the benefit of all the cases on this subject. After all, this court is administering international law.

THE JUDGE ADVOCATE: That may be so, but, you know, the proposition that you will find in any text book of international law something which justifies what is alleged to have happened here is, I should have thought, a rather startling one. However, it is for the court to decide whether this is an occasion when they should grant an adjournment, and, if so, what adjournment. You do not want to say anything more?

MAJOR LEMMON: No.

THE JUDGE ADVOCATE: ²¹How do you, Col. Halse?

COL. HALSE: No.

THE JUDGE ADVOCATE: Would the court like to retire and consider this application?

THE PRESIDENT: Yes.

(At 1650 hours the court is closed)

(At 1658 hours the court reopens)

(The Accused are again brought before the court)

THE PRESIDENT: The court have not been impressed with the arguments which have been advanced for an adjournment, but, in order that the accused shall have every opportunity and that they should have no cause for legitimate complaint, the court have decided to adjourn until 2.15 p.m. tomorrow. The court will now adjourn until that time.

(At 1700 hours the court is adjourned until 1415 hours tomorrow)